

REMARKS

Status of the Application

Claims 1-15 are all the claims pending in the application. Claims 1-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Uematsu (US Patent 5,911,340). Claims 1 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Crisci (US Patent 5,104,008).

Claim Rejections - 35 U.S.C. § 102

Claims 1-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Uematsu (US Patent 5,911,340).

Claim 1 recites, in part, “wherein said closing member comprises a scalable part said scalable part, before sealing, leaving the dispensing orifice clear before the first removal of the closing member and, after sealing, closing the dispensing orifice in sealed manner.” The Examiner alleges that Uematsu discloses each of the elements of claim 1. Applicants respectfully disagree.

The Examiner, in applying Uematsu against claim 1, alleges that Uematsu discloses a scalable part as indicated on the annotated figure 2 of Uematsu, found on page 3 of the Office Action. According to the annotated Figure, Applicants submit that the Examiner’s alleged scalable part in figure 2, is the part of closing member which is joined, before the first removal of the closing member, to the dispensing duct by the breakable material bridge(s) 28. This scalable part, after its first removal and before its fitting (sealing) in the dispensing duct, leaves the dispensing orifice clear, and closes said orifice when fitted in the duct.

Claim 1, as amended, on the other hand, requires that the sealing part leave the dispensing orifice clear prior to the first removal of the closing member. Since the sealing member identified by the Examiner is unable to leave the dispensing orifice clear prior to the

removal of the closing member (thin walls 28 are still intact, which seals the outer tube 13) since the so called sealable part is not able to leave the dispensing orifice clear. As noted by col. 4, line 66 to col. 5, line 5 of Uematsu, the thin walls 28 are broken by tilting the cap 20 from the spout 10. The breaking of thin walls 28 constitutes the first removal of the cap 20, and prior to the this walls 28 breaking, the dispensing orifice is completely enclosed. Therefore, Uematsu cannot disclose a sealing member as recited in amended claim 1, and claim 1 is patentable over the applied art. Claims 1-14 are patentable at least by virtue of their dependency from claim 1.

Further, claim 3 is patentable for reasons independent of its dependency. Claim 3 recites that the “sealable part is deformable and can be welded to itself.” The Examiner alleges that the identified sealable part in the annotated figure is deformable and can be welded to itself. The feature of annotated figure 2 identified as being the sealable part is a circumferential rib disposed on the cap 20. However, Uematsu fails to disclose that the rib may be bent or otherwise deformed in a manner which would allow two different part of the sealable portion to be welded to one another. Therefore, claim 3 is patentable over the applied art.

Claims 1 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Crisci (US Patent 5,104,008).

Claim 1, as amended, recites, in part “wherein said closing member comprises a sealable part said sealable part, before sealing, leaving the dispensing orifice clear before the first removal of the closing member and, after sealing, closing the dispensing orifice in sealed manner.” The Examiner alleges that Crisci discloses each of the elements of claim 1. Applicants respectfully disagree.

Concerning the new cited reference Crisci, Applicants first note that the closure device of Crisci is not formed as a single piece by injection molding. The passage (col. 4, lines 10-11)

cited by the Examiner merely indicates that the device is formed of molded plastic. However, molded plastic does not necessarily mean that the device is molded as a single piece.

Further, Crisci cannot disclose that the aperture 19 is clear before the first removal of the top cap 22. Rather, the aperture 19 is blocked until first removal of the top cap 22, which allows the plug 20 to be removed, leaving aperture 19 clear. Thus, because Crisci fails to disclose that the dispensing orifice is clear before the first removal of the closing member, amended claim 1 is patentable over the applied art.

Claim 15 is patentable at least by virtue of its dependency from claim 1.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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